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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,362	01/05/2004	Radhakrishnan Janardanan Nair	AA611	2195

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CINCINNATI, OH 45224

EXAMINER
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CHAPMAN, GINGER T

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/751,362	NAIR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ginger T. Chapman	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 3 and 5-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-11 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group I, species 2 in the reply filed on 23 January 2006 is acknowledged. Examiner notes as per Applicants' response to election of species requirement, claim 1 is generic to the disclosed species. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP §§ 809.04(d), 809.02(a).

### ***Status of the claims***

Claims 1-11 are pending in the application; claims 3 and 5-9 are withdrawn from consideration as being directed to a nonelected species.

### ***Withdrawn Rejections***

The 35 U.S.C. 112 rejections of claims 1 and 4 are withdrawn due to Applicants' amendment to the claims.

### ***Claim Rejections - 35 USC § 102 / 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Pargass et al (US 6,558,499).

Claim 1. Pargass et al disclose an absorbent product (10) comprising a package (col. 5, l. 4) and at least n absorbent articles contained in the package, wherein n is greater than 10 (col. 5, l. 5), each of the absorbent articles having a body contacting surface (14) and a garment contacting surface (22) opposing the body contacting surface, each of the absorbent articles comprising: a component material (26) disposed between the body contacting surface (14) and the garment contacting surface (17), the component material (26) having a printed graphic (21) which is seen through either the body contacting surface or the garment contacting surface (fig. 1); wherein the printed graphic (21) of each of the n absorbent articles is different from the graphic of each of the remaining absorbent articles and all of the printed graphics (21) of the n absorbent articles have a predetermined association (col. 15, ll. 44-52).

Claim 2. Pargass et al disclose the predetermined association includes a predetermined order, and the n absorbent articles are stacked in the package in accordance with the predetermined order (col. 5, ll. 2-6).

Claim 4. Pargass et al disclose the predetermined order is an order of usage instruction (col. 6, l. 59).

Claim 10. Pargass et al disclose the component material (26) is selected from the group consisting of a backsheet (col. 8, ll. 47-48).

Claim 11. Pargass et al disclose n is selected from 11 to 120 (col. 5, l. 5).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pargass et al in view of Stavrulov (WO 00/13632).

Claim 4. Pargass et al disclose the predetermined order includes an order of usage instructions but does not expressly disclose an order illustrating story, an order for daily activity, an order for educational training, a sequential indication means, an order of usage instruction, an order illustrating child care tips, and an order of sales promotion. Stavrulov, at page 3, lines 15-22 expresses the desire and clear motivation to increase the attractiveness of single use hygienic products such as diapers by covering the surface of the product with images in the form of texts and pictures of educational, entertaining, instructive or other nature attractive to a consumer thereby increasing consumer demand for the product. Stavrulov teaches an order illustrating story, (p. 7, l. 24) an order for daily activity (p. 7, l. 20, l. 23), an order for educational training (p. 7, l. 18), a sequential indication means (p. 8, ll. 19-20), an order of usage instruction (p. 1, l. 20), an order illustrating child care tips (p. 7, ll. 19-20), and an order of sales promotion (p. 12, l. 2). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the orders as taught by Stavrulov in the predetermined order of Pargass et al since Stavrulov states at page 11, lines 11-16 that this attracts consumer attention and stimulates the purchase of the product by the consumer.

#### ***Response to Arguments***

Applicant's arguments filed 23 January 2006 have been fully considered but they are not persuasive.

I. Applicant argues Pargass ('499) does not expressly disclose more than 10 different graphics while the instant invention requires more than 10 absorbent articles each having a

unique graphic, thus Pargass contains no disclosure of a set of unique graphics approaching anywhere more than 10 in number.

This argument is not persuasive because Pargass states:

“Further, a variety pack of absorbent articles and method for making the same are provided, wherein each absorbent article in the pack includes a graphic thereon which differs from the graphics on the other absorbent articles in the pack.” (Abstract)

and:

“...each package of absorbent articles contains anywhere from 3 to 15, and preferably from 5 to 10, distinct repeating graphics in each package.” (col. 5, ll. 3-6).

Thus Pargass et al disclose a package containing at least n absorbent articles contained in the package, and 15 distinct graphics in the package of n articles, and the 15 distinct graphics are repeating; thus the package can contain distinct 15 graphics among the n articles, and n must inevitably and necessarily be greater than 15.

Further,

Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. *In re Ngai*, \_\_\_ F.3d \_\_\_, 2004 WL 1068957 (Fed. Cir. May 13, 2004). See also *In re Gulack*, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983) (“Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability .... [T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.”).

See MPEP § 2112.01 III.

II. Applicant argues that the ink jet printing of graphics as compared to the roll printing of Pargass is a significant difference because it makes large number of unique graphics possible. This argument is not persuasive because the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571) 272-4934. The examiner can normally be reached on Monday through Friday 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ginger Chapman  
Examiner, Art Unit 3761  
03/31/06

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**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

